APPENDIX

APPENDIX A

Agricultural Marketing Agreement Act, 7 U.S.C. § 601 et seq. Sections 601, 602 in pertinent part, 608c(1), (3), (4), (5), (7), (9), (15), (16) (A), of Agricultural Marketing Agreement Act of 1937

§ 601. Declaration of conditions

It is declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce. May 12, 1933, c. 25, Title I, § 1, 48 Stat. 31; June 3, 1937, c. 296, §§ 1, 2(a), 50 Stat. 246.

§ 602. Declaration of policy; establishment of price basing period; marketing standards; orderly supply flow; circumstances for continued regulation

It is declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish, as the prices to farmers, parity prices as defined by section 1301(a)(1) of this title.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this chapter which has for its purpose the maintenance of prices to farmers above

the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.

(3) Through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to establish and maintain such minimum standards of quality and maturity and such grading and inspection requirements for agricultural commodities enumerated in section 608c(2) of this title, other than milk and its products, in interstate commerce as will effectuate such orderly marketing of such agricultural commodities as will be in the public interest.

(4) Through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to establish and maintain such orderly marketing conditions for any agricultural commodity enumerated in section 608c(2) of this title as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices.

(5) Through the exercise of the power conferred upon the Secretary of Agriculture under this chapter, to continue for the remainder of any marketing season or marketing year, such regulation pursuant to any order as will tend to avoid a disruption of the orderly marketing of any commodity and be in the public interest, if the regulation of such commodity under such order has been initiated during such marketing season or marketing year on the basis of its need to effectuate the policy of said sections. May 12, 1933, c. 25, Title I, § 2, 48 Stat. 32; Aug. 24, 1935, c. 641, §§ 1, 62, 49 Stat. 750, 782; June 3, 1937, c. 296, §§ 1, 2(b), 50 Stat. 246, 247; Aug. 1, 1947, c. 425, § 1, 61 Stat. 707; July 3, 1948, c. 827, Title III, § 302(a), 62 Stat. 1257; Aug. 28, 1954, c. 1041, Title IV, § 401(a), 68 Stat. 906; Aug. 8, 1961, Pub.L. 87-128, Title I, § 141(1), 75 Stat. 303.

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§ 608c. Orders regulating handling of commodity—Issuance by Secretary

(1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this chapter as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

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Notice and hearing

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this chapter with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

Finding and issuance of order

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this chapter with respect to such commodity.

Milk and its products; terms and conditions of orders

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: *Provided,* That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of

uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk, which may be adjusted to reflect sales of such milk by any handler or by all handlers in any use classification or classifications, during a representative period of time which need not be limited to one year. In the event a producer holding a base allocated under this clause (d) shall reduce his marketings, such reduction shall not adversely affect his history of production and marketing for the determination of future bases. Allocations to producers under this clause (d) may be transferable under an order on such terms and conditions as may be prescribed if the Secretary of Agriculture determines that transferability will be in the best interest of the public, existing producers, and prospective new producers. Any increase in class one base resulting from enlarged or increased consumption and any producer class one bases forfeited or surrendered shall first be made available to new producers and to the alleviation of hardship and inequity among producers. In the case of any producer who during any accounting period delivers a portion of his milk to persons not fully regulated by the order, provision may be made for reducing the allocation of, or payments to be received by, any such producer under this clause (d) to compensate for any marketings of milk to such other persons for such period or periods as necessary to insure equitable participation in marketings among all producers. Notwithstanding the provisions of subsection

(12) of this section and the last sentence of subsection (19) of this section, order provisions under (d) above shall not become effective in any marketing order unless separately approved by producers in a referendum in which each individual producer shall have one vote and may be terminated separately whenever the Secretary makes a determination with respect to such provisions as is provided for the termination of an order in subsection (16)(B) of this section. Disapproval or termination of such order provisions shall not be considered disapproval of the order or of other terms of the order.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection, providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) of this subsection.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection.

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection, for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii)

for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of sections 291 and 292 of this title, engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: *Provided,* That, it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

(H) Marketing orders applicable to milk and its products may be limited in application to milk used for manufacturing.

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Terms common to all orders

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) of this section orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall

be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their power and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of any agency established pursuant to this paragraph shall be deemed to be acting in an official capacity, within the meaning of section 610(g) of this title, unless such person receives compensation for his personal services from funds of the United States. There shall be included in the membership of any agency selected to administer a marketing order applicable to grapefruit for canning or freezing one or more representatives of processors of the commodity specified in such order.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5)-(7) of this section and necessary to effectuate the other provisions of such order.

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Orders with or without marketing agreement

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal

or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this chapter with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agree-

ment or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

Regional application

(11)(A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this chapter.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

Approval of cooperative association as approval of producers

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

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Petition by handler for modification of order or exemption; court review of ruling of Secretary

(15)(A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such

proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 608a(6) of this title. Any proceedings brought pursuant to section 608a(6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

Termination of orders and marketing agreements

(16)(A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this chapter, terminate or suspend the operation of such order or such provision thereof.

APPENDIX B

Pertinent Portions of the Secretary's 1964 Order for the Massachusetts-Rhode Island Milk Marketing Area (7 C.F.R. §§ 1001.70 and 1001.72)

PAYMENTS—GENERAL

§ 1001.70 *Payments to producers.*

(a) On or before the 5th day after the end of the month, each handler shall pay each producer for the approximate value of milk received from him during the first 15 days of the month. This payment shall be at a rate not less than the applicable zone Class II price for the month.

(b) On or before the 20th day after the end of the month, each handler shall make final payment to each producer for the total value of milk received from him during the month at not less than the basic blended price per hundredweight computed under § 1001.64, adjusted by the zone, butterfat, and farm location differentials applicable under §§ 1001.62, 1001.71, and 1001.72, minus the amount of the payment made to the producer under paragraph (a) of this section.

§ 1001.72 *Farm location differentials.*

In making the payments to producers required under § 1001.70, each handler shall add any applicable farm location differential specified in this section.

(a) With respect to milk received from a producer whose farm is located within any of the places specified in this paragraph, the differential shall be 46 cents per hundredweight, unless the addition of 46 cents gives a result greater than the Class I price determined under §§ 1001.60 and 1001.62 which is effective at the plant at which the milk is received. In that event there shall be added a rate which will produce that price.

CONNECTICUT

All of the State of Connecticut east of the Connecticut River and the towns of:

Granby. Suffield.

MAINE

The towns of:

Eliot. Kittery.

MASSACHUSETTS

All counties other than Berkshire County.

NEW HAMPSHIRE

Rockingham County, and the following cities and towns: Allenstown, Amherst, Barrington, Bedford, Bow, Brookline, Chichester, Deering, Dover, Durham, Epsom, Francestown, Goffstown, Greenfield, Greenville, Hinsdale, Hollis, Hooksett, Hudson, Lee, Litchfield, Lyndeborough, Madbury, Manchester, Mason, Merrimack, Milford, Mount Vernon, Nashua, New Boston, New Ipswich, Pelham, Pembroke, Pittsfield, Rochester, Rollinsford, Strafford, Temple, Weare, Wilton, Winchester.

RHODE ISLAND

All of the State of Rhode Island.

VERMONT

The towns of:

Guilford, Halifax, Readsboro, Vernon, Whitingham.

(b) With respect to milk received from a producer whose farm is located within any of the following cities and towns, the differential shall be 23 cents per hundredweight, unless the addition of 23 cents gives a result greater than the Class I price determined under §§ 1001.60 and 1001.62 which is effective at the plant at which the milk is received. In that event there shall be added a rate which will produce that price.

Maine

Berwick, Kennebunk, Kennebunkport, Lebanon, Lyman, North Berwick, Sanford, South Berwick, Wells, York.

Massachusetts

Becket, Florida, Hinsdale, Otis, Peru, Sandisfield, Savoy, Washington, Windsor.

New Hampshire

Antrim, Barnstead, Bennington, Boscawen, Bradford, Canterbury, Chesterfield, Concord, Dublin, Dumbarton, Farmington, Fitzwilliam, Gilmanton, Gilsum, Hancock, Harrisville, Henniker, Hillsborough, Hopkinton, Jeffrey, Keene, Loudon, Marlborough, Middleton, Milton, Nelson, Northfield, Peterborough, Richmond, Rindge, Roxbury, Sharon, Somersworth, Stoddard, Sullivan, Surry, Swanzey, Troy, Webster, Westmoreland, Windsor.

Vermont

Brattleboro, Brookline, Dover, Dummerston, Marlboro, Newfane, Putney, Wilmington.

APPENDIX C

HOUSE OF REPRESENTATIVES

74th Congress 1st Session — Report No. 1241

Agricultural Adjustment Act Amendments

June 15, 1935.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

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Mr. Jones, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H. R. 8492]

The Committee on Agriculture, to whom was referred the bill (H. R. 8492) to amend the Agricultural Adjustment Act, and for other purposes, having had the same under consideration, report it back to the House without amendment and recommend that the bill do pass.

GENERAL STATEMENT

The proposed amendments to the Agricultural Adjustment Act have two principal purposes. The first is to supplement the provisions of the present act in such a way as to permit the agricultural adjustment program to operate more effectively in achieving its objectives. The second is to make certain that the program will be carried out within the limits of the regulatory power given Congress under the Constitution and that no authority to carry out the program will be conferred in conflict with the principle that power cannot be delegated to an executive officer unless adequate standards are provided by Congress to guide him in exercising such power.

The bill proposes to supplement the agricultural adjustment program by (1) providing for the so-called "ever-normal granary plan"; (2) providing for payments in connection with the exportation of basic agricultural commodities and products and for removal of quantities thereof from the normal channels of trade and providing for payments on that part of the production thereof which is for domestic consumption; (3) providing for effective marketing agreements and orders to accomplish the objective of parity price for certain nonbasic agricultural commodities, milk, and tobacco; (4) redefining parity price so as to include increases in tax and interest payments in the computations for determining parity; (5) providing a fund, which is in addition to and apart from Agricultural Adjustment Act funds, which is to be used for exportation of major agricultural commodities and products, removal of agricultural commodities and products from the normal channels of trade and commerce, acquisition of submarginal lands, and financing acreage and production adjustments of agricultural commodities; and (6) authorizing restrictions on imports from abroad which threaten the agricultural program. It is believed that the effect of these amendments will be to safeguard the present act, to extend its usefulness, and to provide programs flexible enough to establish and maintain the rehabilitation of the country's agriculture.

The bill confines the exercise of power to the Federal field of regulation of interstate and foreign commerce and spells out specific standards, guides, and courses of action in such a manner as to find support in the Supreme Court cases establishing the principles of constitutional law applying to the exercise of administrative powers.

An exposition of each of the important points in the bill is set forth below under an appropriate heading. This matter contrasts the particular provision of the bill with the present law, describes how the new provision is designed to

operate, indicates the necessity for the provision dealt with, and, where necessary, explains the legal and constitutional basis for it.

Parity Price

The declaration of policy in the Agricultural Adjustment Act has as its objective the reestablishment of prices paid to farmers at a level that will give agricultural commodities a current purchasing power equivalent to that of the base period. Section 1(a) of the bill amends this provision of the act to provide that, in the case of all commodities for which the base period is the pre-war period (August 1909 to July 1914), such prices will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate as contrasted with such payments during the base period. This provision is intended to give the Agricultural Adjustment Administration a somewhat more adequate standard for determining parity prices. The present method of calculation is composed of an index of prices of goods which farmers buy in relation to the pre-war level and does not cover expenditures for taxes and for debt service. At the present time, taxes per acre and mortgage interest per acre are probably about 160 to 170 percent of the pre-war level. The combination of these two items, together with the index of prices paid by farmers, may be expected to give parity standards approximately 5 percent higher than at present. The corresponding amendment to section 9 (c) of the act, which defines parity price, is made by section 13 of the bill. It is there provided that this amendment shall not affect the rates of any processing taxes now in effect, and shall not require their adjustment until the Secretary finds such adjustment necessary in order to effectuate the declared policy of the act.

Declaration of Policy—Consumer's Interest

Certain changes have been made by section 1(b) of the bill "Declaration of policy" contained in section 2 of the

present act, in order more clearly to delimit the scope of the Secretary's authority under that section. Subsection (3) of the "Declaration of policy" contained in the present act, which was inserted in order to protect consumers against unwarrantably rapid or excessive price increases, is ambiguously worded and has met with some criticism from the courts as being a vague and unintelligible standard, from which the Secretary can derive no adequate guide in the exercise of his powers. This language has, accordingly, been reworded to make it clear that the act confers no authority upon the Secretary to utilize his powers in order to maintain farm prices above the parity level. The amendment does not require either a change in the current rate of the processing tax or a change in the amount of benefits to be paid under the rental and benefit payment provisions of the act.

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MARKETING AGREEMENTS AND ORDERS

The provisions of the present act which relate to marketing agreements and licenses are of vital importance to 2,000,000 or more farmers. The producers of fruits and vegetables and other commodities which have not been named in the act as "basic" commodities have been forced to rely for the most part upon marketing agreements and licenses in order to achieve the goal set forth in the declaration of policy. The proposed amendments substitute the word "order" for "license" in order more accurately to describe the nature of the Secretary's regulatory power. The operations of cooperative marketing associations will be reenforced by the new sections of the bill dealing with these matters and these provisions will assure the cooperation of processors and distributors in programs intended to raise farm prices. The marketing agreements and licenses which have been issued and entered into pursuant to the Agricultural Adjustment Act have contained a great variety of provisions in order to adapt each particular program to

the peculiar problems and circumstances presented in a given area by a particular commodity. The essential purpose of these agreements and licenses has, however, always been to raise producer prices.

The proposed amendments, insofar as they relate to marketing agreements and orders, are primarily intended to implement and spell out in more detail and with greater freedom from ambiguity the powers which were provided for in the original act. The present language of the statute is, unfortunately, subject to serious misconstruction. This has given rise to obstacles in connection with the enforcement of the marketing agreements and licenses which have seriously endangered their successful operation.

Under the amendment proposed in the bill, the orders can be made applicable only to certain commodities named in the bill, and can contain only such terms and conditions as are expressly authorized in the bill. Furthermore, the amendments contain provisions intended to safeguard the exercise of and prevent abuses in the application of the regulatory power conferred upon the Secretary. Specific exemption of producers from the power to issue orders has been provided for, and, except in the case of retailers of milk and its products, the issuance of orders applicable to retailers is restricted as set forth below. A congressional policy that orders shall be limited in their application to the smallest practicable region, and that they shall contain different terms applicable to different areas, has been carefully spelled out. These and other restrictive provisions are, in the opinion of the committee, adequately drawn to guard against any fear that the regulatory power is so broad as to subject its exercise to the risk of abuse.

Section 5 of the bill eliminates the present licensing section (sec. 8(3)) of the Agricultural Adjustment Act, and in lieu thereof authorizes the Secretary of Agriculture to issue orders covering the marketing and distribution of specific agricultural commodities. Because the provisions

of the present law for administrative revocation have been eliminated in the proposed bill, the term "license" has been discarded, and the term "order", in general usage with respect to administrative regulations, such as those of the Interstate Commerce Commission and of the Federal Trade Commission, has been substituted. To eliminate questions of improper delegation of legislative authority raised by the decisions in *Schechter, et al.* v. *United States*, the provisions relating to orders enumerate the commodities to which orders issued by the Secretary of Agriculture may be applicable, prescribe fully the administrative procedure to be followed by the Secretary in issuing, enforcing and terminating orders, and specify the terms which may be included in orders dealing with the enumerated commodities. The powers to be exercised under the proposed bill are confined within the limitations upon the Federal Authority over interstate commerce as expressed by the Supreme Court in the *Schechter case* and other cases. A comparison of the proposed provisions and the present law, and a detailed discussion of the proposed provisions with respect to orders is set forth below.

First. Orders may be issued by the Secretary of Agriculture applicable to those engaged in the handling of milk, fruits (except apples and fruits for canning), pecans, walnuts, tobacco, vegetables (except vegetables for canning), and naval stores as defined in the Naval Stores Act, and applicable to those engaged in the handling of products of all of the enumerated commodities except naval stores. Under the present section 8(3) of the Agricultural Adjustment Act there is no restriction upon the number or type of agricultural commodities concerning which licenses may be issued.

The scope of orders under the proposed section 8c is limited to the regulation of the handling of the specified commodities in the current of interstate or foreign commerce or to the handling thereof which directly burdens,

obstructs, or affects interstate or foreign commerce in such commodities or products thereof. Section 8(2) of the Agricultural Adjustment Act now authorizes the Secretary of Agriculture to enter into marketing agreements with processors and others engaged in the handling of any agricultural commodity or product thereof "in competition with" interstate or foreign commerce. This phrase has been omitted from the proposed section 8c (1) of the bill which deals with orders, as well as from the proposed section 8b, which deals with marketing agreements, because the proposed language makes it clear that the full extent of the Federal power over interstate and foreign commerce and no more is intended to be vested in the Secretary of Agriculture in connection with orders.

Second. Specific provisions governing the Secretary of Agriculture in determining when to issue and in issuing orders are included in the proposed bill. Orders may not become effective until the handlers of not less than 50 percent of the volume of the commodity to be covered by the proposed order have signed a marketing agreement which regulates the handlers in the same manner as the proposed order. But when such a marketing agreement has been signed, if the Secretary finds that the issuance of an order would tend to effectuate the declared policy with respect to the commodity and transactions covered in the order, the Secretary must issue an order. Without such consent of the handlers to be covered thereby, a proposed order may become effective only if the Secretary of Agriculture, with the approval of the President, finds (1) that the failure of the requisite number of handlers to sign a marketing agreement, upon which a hearing has been held, tends to prevent the effectuation of the declared policy; (2) that the issuance of the proposed order is the only practicable means of carrying out the declared policy; and (3) that the issuance of the proposed order is approved or favored by at least two-thirds, by number or volume, of those producing the commodity for market. But, if the Secretary finds the facts set

forth in the preceding sentence, he must issue an order, notwithstanding the failure of the required number of handlers to sign the marketing agreement. An order issued without such consent of the handlers to be covered thereby may not, except in the case of milk and its products, be applicable to any person selling agricultural commodities at retail in his capacity as a retailer, nor may it in any case be applicable to any producer in his capacity as a producer.

So that proper recognition may be given to local differences which may exist in production or marketing methods or conditions, orders are required to be limited in their application to the smallest practicable regional production or marketing areas, and orders applicable to the same commodity or product are required to prescribe such terms applicable to different production or marketing areas as will recognize local production and marketing differences. Orders relating to milk and its products are exempted from the requirement that they be limited in their application to the smallest practicable regional production or marketing areas.

Prior to the issuance of any order, the Secretary of Agriculture is required to give notice of and an opportunity for hearing upon the order proposed. He cannot issue the order unless he finds from the evidence introduced at such hearing that the issuance of the proposed order and each of its terms and conditions will effectuate the declared policy of title 1.

Third. Subsection (5) of the proposed section 8c states specifically the terms which may be included in orders relating to milk and its products. These terms follow the methods employed by cooperative associations of producers prior to the enactment of the Agricultural Adjustment Act and the provisions of licenses issued pursuant to the present section 8(3) of the Agricultural Adjustment Act. Such orders may contain provisions classifying milk in accordance with its ultimate utilization, and may fix, or provide a method for fixing, minimum prices which shall be paid by

handlers to producers for milk in each use classification. This provision makes it possible to take into consideration in orders dealing with milk, the difference in value between milk sold for consumption in fluid form and that used in the manufacture of such products as butter, evaporated milk, etc.

Minimum prices fixed in such orders are required to be uniform as to all handlers, subject to adjustments for differences in the grade and quality of the milk delivered, for differences in transportation costs from the place at which delivery is made to the handler to the distributing or processing plant, and for volume, market, and production differentials customarily applied by handlers. The volume differential is a differential which is paid when the operations of several country plants are consolidated into one plant. The inconvenience which is caused to producers by closing up plants to which they have been delivering and requiring that all of their milk be handled by one plant, is compensated by an additional payment to the producers. The production differential is the differential which is paid to a producer, compensating him for keeping his farm and milk qualified for a city market even though his milk may actually be going into manufactured use. It is necessary to keep this supply of reserve milk available for periods in which consumption of milk goes up so that the effect is that the producers must keep their farm in the same condition as if they were shipping milk into the city every day. The production differential is a payment to the farmer for performing this function in the market.

The market differential is a differential which is given to the producer to compensate him for delivering his milk to a city market instead of to a country plant. These differentials vary with the markets and cannot be qualified as a "location" differential, because of the fact that location is usually determined on the distance from a primary market whereas market differentials are usually paid in secondary markets.

The authority conferred with respect to price-fixing deals only with prices to be paid by handlers; fixing of prices at which milk and its products may be sold by handlers is not permitted in the proposed bill.

The validity of State legislation fixing minimum prices at which milk may be purchased from producers was sustained in *Nebbia* v. *New York* (291 U.S. 502), and *Hegeman Farms Corporation* v. *Baldwin* (293 U.S. 163) against an attack upon the ground that such legislation violated the due-process clause of the fourteenth amendment. Since the requirements of due process under the fourteenth amendment and under the fifth amendment are identical (*Heiner* v. *Donnan*, 285 U.S. at 312, 326), the price-fixing provisions authorized to be included in orders issued under the proposed section 8c conform to the requirements of due process under the fifth amendment. That regulations fixing the price at which an agricultural commodity may be purchased are proper exercises of the Federal power over interstate commerce is established by such decisions as *Lemke* v. *Farmers' Grain Co.* (258 U. S. 50), and *Baldwin* v. *Seelig* (55 Sup. Ct. Rep., 497).

Alternative methods of distributing the total dollar value of all milk sold in the market among the producers supplying the market are provided. Uniform prices are required to be paid to all producers and associations of producers for all milk delivered by them irrespective of the use to which such milk is put by the particular handler to whom any producer or association of producers sells its milk. An alternative provision may be included, requiring instead the payment of uniform prices by each handler to all producers and associations of producers delivering milk to him, but, except in the case of orders covering manufactured milk products only, such a provision may not be included unless the Secretary finds that its inclusion is approved or favored by three-fourths of the producers by number or by volume of production.

In order to eliminate, so far as possible, violent seasonal fluctuations in the available milk supply with their attendant disturbing effect upon returns to producers, and to encourage a uniform volume of production throughout the year, an adjustment in payments to prdoucers upon the basis of their production records during a representative period may be included in such orders, in addition to the adjustments described above. Milk orders may also provide a method for adjustments among handlers so that the payments for milk made by each handler shall equal the value of the milk to the handler in the use classification to which it is devoted by him.

To prevent the destruction of the minimum price schedules which may be fixed in an order, handlers subject to it may be required to pay, for a period of 90 days, the price fixed for milk classified for manufacturing purposes to producers not therefore selling milk for consumption in the area covered by the order. This time limitation is designed to prevent assaults upon the price structure by the sporadic importation of milk from new producing areas, while permitting the orderly and natural expansion of the area supplying any market by the introduction of new producers or new producing areas. This is the only limitation upon the entry of new producers—wherever located—into a market, and it can remain effective only for the specified 90-day period. Provisions for verification of weights, for sampling and testing milk, and for insuring that producers will be paid for milk purchased from them may also be included in milk orders.

A specific provision is included in this proposed subsection safeguarding the right of cooperative marketing associations qualified under the Capper-Volstead Act to make distribution of the proceeds of milk sold by them to their members in accordance with the contracts between the cooperatives and their members.

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74th Congress, 2d Session - - - - - - House Document No. 501

Report of the

FEDERAL TRADE COMMISSION

on the

DISTRIBUTION AND SALE OF MILK AND MILK PRODUCTS

BOSTON, BALTIMORE, CINCINNATI, ST. LOUIS

LETTER

FROM THE

CHAIRMAN OF THE FEDERAL TRADE COMMISSION

TRANSMITTING

THE FOURTH REPORT OF THE FEDERAL TRADE COMMISSION REGARDING THE DISTRIBUTION AND SALE OF MILK AND MILK PRODUCTS, ENTITLED "REPORT OF FEDERAL TRADE COMMISSION ON MILK-MARKET REGULATION AND PRACTICES OF DISTRIBUTORS IN RELATION TO MARGINS, COSTS, AND PROFITS OF DISTRIBUTORS IN BOSTON, BALTIMORE, CINCINNATI, AND SAINT LOUIS"

JUNE 4, 1936.—Referred to the Committee on Interstate and Foreign Commerce and ordered to be printed

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1936

LETTER OF TRANSMITTAL

FEDERAL TRADE COMMISSION,
Washington, June 4, 1936.

THE SPEAKER OF THE HOUSE,
House of Representatives, Washington, D. C.

SIR: I have the honor to transmit herewith a fourth report of the Federal Trade Commission, regarding the distribution and sale of milk and milk products, entitled "Report of Federal Trade Commission on Milk Market Regulation and Practices of Distributors in Relation to Margins, Costs, and Profits of Distributors in Boston, Baltimore, Cincinnati, and St. Louis."

The three previous reports of the Commission on this subject were as follows: (1) General report, including hearings, on the Connecticut and Philadelphia milksheds (H. Doc. 152, 74th Cong., 1st sess.), (2) costs, investment and profits in the Connecticut and Philadelphia milksheds (H. Doc. 387, 74th Cong., 2d sess.), and (3) a report on the Chicago milkshed which was sent to Congress on April 15, 1936, but which has not yet been printed.

Like the previous reports, the present report was prepared and is submitted pursuant to House Concurrent Resolution No. 32, Seventy-third Congress, second session, adopted June 15, 1934.

By direction of the Commission.

CHARLES H. MARCH, *Chairman.*

APPENDIX B. MARKET ADMINISTRATOR FOR THE GREATER BOSTON MARKETING AREA

Uniform prices for 3.7 milk, by zones, Feb. 9–15, 1936

		Prices per hundredweight for producers with bases	
		Blended price for milk not in excess of base	Class II price for milk in excess of base
For milk delivered to plants located within 40 miles of the Statehouse in Boston:			
1. From farms located within 40 miles of the Statehouse in Boston		$3.30	$1.666
2. From farms located more than 40 miles from the Statehouse in Boston		2.859	1.666
For milk delivered to plants located more than 40 miles from the Statehouse in Boston, as follows:			
Zone:	*Miles*		
5	41- 50	2.414	1.606
6	51- 60	2.402	1.606
7	61- 70	2.396	1.606
8	71- 80	2.384	1.606
9	81- 90	2.378	1.606
10	91-100	2.367	1.606
11	101-110	2.361	1.606
12	111-120	2.355	1.606
13	121-130	2.343	1.606
14	131-140	2.331	1.606
15	141-150	2.331	1.606
16	151-160	2.314	1.606
17	161-170	2.314	1.606
18	171-180	2.308	1.606
19	181-190	2.296	1.606
20	191-200	2.284	1.606
21	201-210	2.284	1.606
22	211-220	2.273	1.606
23	221-230	2.267	1.606
24	231-240	2.261	1.606
25	241-250	2.261	1.606
26	251-260	2.249	1.606
27	261-270	2.243	1.606
28	271-280	2.237	1.606
29	281-290	2.237	1.606
30	291-300	2.226	1.606

Producers without bases are to be paid the Class II price for all milk.

From the above prices, the following deductions are to be made:

Members of qualified associations (Art. IX, Sec. 2) (such deductions as are authorized by members). Nonmembers (Art. IX, Sec. 1) 5 cents per hundredweight of all milk. U. S. D. of A. weighted average price f. o. b. Boston of 40 percent cream of bottling quality for February 9–15, 1936, $16.015.

B. F. differential for each 1/10 of 1% variation from 3.7 test, $0.041.

MARKET ADMINISTRATOR—GREATER BOSTON, MASS., MARKETING AREA

Extracts from the computations which resulted in the uniform prices announced for the February 9–15, 1936, period (Art. VII, Sec. 2, Par. 7)

Art. VII, Sec. 2:		
Par. 1. Total of the respective values of milk		$331,111.59
2. Total net amount of the differentials applicable pursuant to Sec. 4 of Art. VIII		43,533.28
Total		374,644.87
3. Total amount to be paid to producers pursuant to pars. 2, 3, and 4 of Sec. 1 of Art. VIII		46,658.96
Total		327,985.91

Extracts from the computations which resulted in the uniform prices announced for the February 9–15, 1936, period (Art. VII, Sec. 2, Par. 7)—Continued

Art. VII, Sec. 2—Continued.	
Par. 4. Total base milk delivered, except that delivered from farms located within, to plants located within, 40 miles of the statehouse in Boston (pounds)	$12,197,233
Blended price per hundredweight	$2.689
5. Deduction for the purpose of retaining a cash balance	.040
Basic blended price from which zone prices are calculated	$2.649
Art. VIII, Sec. 4:	
Par. 2. Differential to be added to determine the blended price to be paid to a producer for milk not in excess of his base which is delivered from a farm located more than 40 miles, to a handler's plant located within 40 miles, of the statehouse in Boston	.210
	$2.859
Basic blended price, as above	$2.649
Art. VIII, Sec. 4:	
Par. 1. Carlot freight rate per cwt. (considering 85 pounds of milk per can) for zone 5	.2353
Blended price to be paid to a producer for milk not in excess of his base which is delivered to a handler's plant located between 41 and 50 miles from Boston	$2.414

(The blended prices to be paid to producers for milk not in excess of their respective bases which is delivered at handler's plants located more than 50 miles from Boston are determined in the above manner by deducting from the basic blended price ($2.649) the C. L. freight rate per cwt. to Boston from the zone in which the handler's plant is located.)

	Pounds of milk		
	Total	Percent	Daily average
Total receipts reported	14,717,767	100.00	2,102,538
Milk reported not in excess of base	12,559,119	85.33	1,794,160
Net Class I sales reported	8,176,005	55.55	1,168,001
% sales to base	65.10		

Source: Office of the Market Administrator, room 701, 80 Federal St., Boston, Mass., Mar. 4, 1936.

Appendix C. Agreement Between the Cincinnati Sales Association and Milk Distributors

THIS AGREEMENT made and entered into as of the 1st day of July 1935, between the Cincinnati Sales Association, hereinafter called the Association, acting by and through its Pooling Committee, and the undersigned corporations, firms, and individuals, all of whom are milk distributors within the Cincinnati milk-marketing area, hereinafter called distributors, WITNESSETH:

In consideration of the mutual agreements herein contained and in further consideration of the benefits to be derived by the Distributors, signatory to this agreement, and the producer associations and milk producers whose milk is being handled by the Cincinnati Sales Association, the parties hereto agree as follows:

1. The Cincinnati market sales area shall be defined as follows: All cities, towns, and suburban areas in Hamilton and Butler Counties, except Middletown and Oxford, and the town of Milford in Clermont County.

2. Distributors agree to purchase through the Association and the Association agrees to sell to the Distributors all of the milk required by said Distributors for Class 1, Class 1-a, and Class 2 uses, and in addition thereto such quantity of

HOUSE OF REPRESENTATIVES
75th Congress 1st Session

Report No. 468

AGRICULTURAL MARKETING AGREEMENT OF 1937

MARCH 24, 1937.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

MR. FULMER, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H. R. 5722]

* * * * * * * * * *

Approximately 80 marketing programs have been undertaken, pursuant to the provisions of the Agricultural Adjustment Act, since it became effective in May 1933. These programs have proven to be valuable supplements to the cooperative efforts of producers, particularly in the case of fruits, vegetables, and milk. Many of these programs have operated effectively throughout the past 3 or 4 years. Some have been terminated due to changed circumstances, and others encountered certain enforcement difficulties resulting from litigation. Despite these difficulties, however, these programs are gradually finding a definite place in the development of orderly marketing for certain agricultural commodities.

REASONS FOR REENACTING THE MARKETING AGREEMENT AND ORDER PROVISIONS

The Supreme Court in *United States* v. *Butler* ((1936), 297 U. S. 1), declared invalid the provisions of the Agricultural Adjustment Act authorizing production adjust-

ment programs involving processing taxes and benefit payments. The question as to whether Congress has the constitutional power to regulate interstate and foreign commerce in agricultural commodities through marketing agreements and orders as provided in the Agricultural Adjustment Act was not before the court and has not yet been determined by the court. Lower Federal court decisions have differed on the question, and in two cases courts have held that the marketing agreement and order provisions were inseparable from the production adjustment provisions which fell in the *Butler case.* As a consequence of these decisions, doubt has been cast on the validity of all the agreements and orders, and producers of milk, particularly in New England, are now suffering from a seriously demoralized price situation.

The committee is of the opinion that Congress has the power to regulate interstate and foreign commerce in agricultural commodities in the manner provided in the act, and that an examination of the text and organization of the act and of its history shows these provisions are and were intended to be effective independently of the production adjustment provisions. The committee believes that this view will hold the support of the Supreme Court.

Whatever may be the case, in order that whatever decision which may ultimately be rendered with respect to these provisions may turn on their constitutional validity rather than on their separability, and in order that express authority be given to enter into new agreements and orders in the areas in which they are necessary, it is highly desirable that these provisions be reenacted.

Provisions Reenacted

Section 1 of the bill reenacts all marketing agreement and order provisions of the Agricultural Adjustment Act, as amended, as well as certain other provisions not relating to production adjustments. The specific reenacted provisions

and a description of their general subject matter are set forth in section 1 of the bill, and their text is set forth in the comparative print accompanying this report, and do not require further explanation. The sections and parts of sections of the Agricultural Adjustment Act not set forth are neither reenacted nor repealed. It is to be noted that section 1 relates only to provisions which are a part of the Agricultural Adjustment Act itself. Such provisions relating to agriculture as were enacted in the 1935 amendments (Public 320) or in other legislation but which were not specifically a part of the Agricultural Adjustment Act are not involved in any respect in this bill. Section 32, relating to removal of surpluses and section 37, relating to elimination of diseased cattle, of that act are of this character.

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MISCELLANEOUS PROVISIONS

Section 4 of the bill negatives any implication that its effect is to invalidate or cast doubt on action heretofore taken under the agreements and orders provisions. The section also expressly ratifies, legalizes, and confirms such action. Judicial sanction for such a provision is found in *Mattingly* v. *District of Columbia* ((1878), 97 U. S. 687, 690); *United States* v. *Heinzen* (1907), 206 U. S. 370, 382); *Tiaco* v. *Forbes* ((1913), 228 U. S. 549, 556); *Rafferty* v. *Smith, Bell & Co.* ((1921), 257 U. S. 226, 232); *Isbrandtsen-Moller Company, Inc.*, v. *United States et al.* (No. 307, October term, 1936, United States Supreme Court, decided Feb. 1, 1937); and *Swayne & Hoyt, Ltd., et al.* v. *United States* (No. 494, October term, 1936, United States Supreme Court, decided Mar. 1, 1937).

Section 5 expressly prohibits the levy or collection of processing and compensating taxes under the Agricultural Adjustment Act, as amended. Except for this provision, the bill does not affect provisions of that act not reenacted

by section 1. The section also makes certain that the re-enacted sections will be applicable not only to each other but also to the other parts of the Agricultural Adjustment Act and to other provisions of law to which they relate.

Section 6 of the bill provides that it may be cited as the "Agricultural Marketing Agreement Act of 1937."

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